

1999

# Tammy Bronson v. Lisa Ann Jones : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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<b>TAMMY BRONSON,</b>	:	
	:	
PLAINTIFF/APPELLANT,	:	
	:	<b>CASE No. 990997</b>
VS.	:	
	:	
	:	<b>PRIORITY No. 15</b>
<b>LISA ANN JONES.</b>	:	
	:	
DEFENDANT/APPELLEE.	:	

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**OPENING BRIEF OF APPELLANT**

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**APPEAL FROM THE SUMMARY JUDGMENT ORDER AND DENIAL OF  
MOTION TO AMEND OF THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, UTAH**

THE HONORABLE TIMOTHY R. HANSON, PRESIDING

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**FILED**

Utah Court of Appeals

MAY 30 2000

Julia D'Alessandro  
Clerk of the Court

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
OTHER AUTHORITIES .....	iii
STATEMENT OF JURISDICTION.....	1
ISSUES PRESENTED, STANDARDS OF APPELLATE REVIEW PRESERVATION OF THE ISSUES .....	1
STATUTES AND RULES .....	2
STATEMENT OF THE CASE, NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION .....	2
STATEMENT OF FACTS .....	3
SUMMARY OF ARGUMENT .....	4
ARGUMENT .....	5
I. ANY INTENTIONAL INTERFERENCE WITH THE MARRIAGE CAN SUPPORT A CLAIM OF ALIENATION OF AFFECTIONS .....	5
II. THE FACTS INDEPENDENTLY SUPPORT A CLAIM OF INVASION OF PRIVACY .....	13
A. Unless the Defendant is Prejudiced, Leave to Amend Should be Granted.....	17
B. The Amendment Sought was not Intended to Defeat Summary Judgment .....	18
CONCLUSION .....	19
CERTIFICATE OF MAILING .....	20
ADDENDA	
ADDENDUM I       (Affidavit of Tammy Bronson)	
ADDENDUM II      (Affidavit of Amy Bronson)	
ADDENDUM III     (Affidavit of Tina Bronson)	
ADDENDUM IV      (Trail Court's Memorandum Decision)	

## TABLE OF AUTHORITIES

### CASES

<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242, 255 (1986)...	12
<u>Berkins Bar V Ranch v. Huth</u> , 664 P.2d 455 (Utah 1983).....	17
<u>Bowen v. Riverton City</u> , 656 P.2d 434, 436 (Utah 1982).....	12, 13
<u>Erk v. Gleen</u> , 116 F.2d 865 (4th Cir. 1941).....	17
<u>Dupler v. Yates</u> , 351 P.2d 624 (Utah 1960).....	18
<u>Harms v. Miami Daily News</u> , 127 So. 2d 715 (Fla. App 1961).....	16
<u>Lewis v. Moultree</u> , 627 P.2d 94 (Utah 1981).....	18
<u>Lloyd's Unlimited v. Nature's Way Mktg., Ltd.</u> , 753 P.2d 507 (Utah 1988).....	2, 17
<u>Norton v. MacFarlane</u> , 818 P.2d 8, 12-13 (Utah 1991).....	7, 8
<u>O'Neil v. Schuckardt</u> , 733 P.2d 693 (Idaho 1986).....	7
<u>Rinwood v. Foreign Auto Works, Inc.</u> , 786 P.2d 1350 (Utah Ct. App.), cert. denied, 789 P.2d 1138 (Utah 1990).....	18
<u>Schurtz v. BMW of N. Am., Inc.</u> , 814 P.2d 1108, 1111-12 (Utah 1991).....	1
<u>Staker v. Ainsworth</u> , 785 P.2d 417 (Utah 1990).....	17
<u>Startford v. Morgan</u> , 689 P.2d 360 (Utah 1984).....	17
<u>Wilson v. Oldroyd</u> , 267 P.2d 759 (1954).....	7

### STATUTES AND RULES

Utah Code Ann. §78-2a-3(2)(j)(1953 as amended).....	1
Utah.R.Civ.Pro. 15(a).....	2, 17

## OTHER AUTHORITIES

RESTATEMENT (SECOND) OF TORTS § 683, NOTE (G).....	8
RESTATEMENT SECOND OF TORTS, § 652B COMMENT A (1977).....	16

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**JURISDICTION**

Utah Code Ann. §78-2a-3(2)(j) provides jurisdiction over an appeal transferred to this Court by the Utah Supreme Court.

**ISSUES PRESENTED FOR REVIEW, STANDARDS OF APPELLATE REVIEW,  
PRESERVATION OF THE ISSUES**

1. Did the trial court err in granting summary judgment on the basis that Bronson could not make a prima facie of alienation of affections?

The granting of summary judgment presents questions of law, to be reviewed without deference for correctness. See e.g. Schurtz v. BMW of N. Am., Inc., 814 P.2d 1108, 1111-12 (Utah 1991).

This issue was addressed in Ms. Bronson's memorandum opposing summary judgment (R. 61-83).

2. Did the trial court abuse its discretion in not granting Bronson's leave to amend her complaint to plead invasion of privacy?



Refusal to grant leave to amend is reviewed for abuse of discretion. See e.g. Lloyd's Unlimited v. Nature's Way Mktg., Ltd., 753 P.2d 507 (Utah 1988).

This issue was addressed in Ms. Bronson's memorandum in support of motion to amend. (R. 94-99).

### **STATUTES AND RULES**

The following statutes and rules pertain:

Rule 15. Utah Rules of Civil Procedure.

...

(b) **Amendments to conform to the evidence.** When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall grant a continuance, if necessary, to enable the objecting party to meet such evidence.

### **STATEMENT OF THE CASE NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION**

Tammy Bronson filed suit against Lisa Ann Jones alleging *inter alia*, alienation of affections, negligent interference with marital relationship and negligent infliction of emotional distress resulting from an extra marital sexual relationship

between Bronson's husband and Jones, Tammy Bronson vs. Lisa Ann Jones, Civil No. 990900347. (R. 1-7).

Jones moved to dismiss the second, fourth and fifth causes of action of the Complaint. (R. 8-13). Bronson did not oppose the motion and the trial court granted the motion (R. 24-25).

Jones thereafter moved for summary judgment on the remaining counts of alienation of affections and emotional distress. (R.26-37). Bronson opposed the motion (R. 61-83), and Jones filed a reply memorandum. (R. 115-119).

Bronson also moved to amend her complaint to conform to the evidence. She alleged invasion of privacy and its collateral infliction emotional distress. (R. 86-99). Jones opposed the amendment. (R. 120-124). Bronson replied to the opposition. (R. 131-140).

Judge Hanson heard the motion for summary judgment and the motion to amend on August 2, 1999. The trial court granted summary judgment and denied the motion to amend in a Memorandum Decision dated August 31, 2000. (R. 144-148)(Addendum IV), and in an order dated and filed on October 19, 1999. (R. 162-165).

Bronson filed a timely notice of appeal on November 11, 1999 (R. 166-168).

#### **STATEMENT OF FACTS**

Plaintiff/Appellant [Bronson] is the wife of Lawrence Tracy Bronson. They were married on or about March 24, 1988. They have two children. (R. 74-77). Shortly after Bronson's marriage, her

husband got involved in a sexual affair with Defendant/Appellee [Jones]. R.74-77). Jones became pregnant. Since the birth of Jones's child, Jones has repeatedly called Bronson's home, asking Bronson's husband to continue the old affair or to ask the husband to leave Bronson. The purpose of the calls to Bronson's home had nothing to do with the welfare of Jones's child, but were specifically calculated to harm Bronson's marriage. (R. 74-77). Bronson's husband discontinued visitations with Jones's child to protect his marriage and to discourage Jones from calling his home. But, Jones continued her incessant telephone calls to Bronson's home. On frequent occasions over the years, she made derogatory remarks to Bronson personally, such as: "lay off my man, bitch," or "you've got my man!" After these vulgar comments, Jones would quickly hang up the telephone. (R. 74-77).

On several occasions, Jones called Bronson and warned her not to get pregnant again. Jones told Bronson that she fully intended to get Bronson's husband and she did not want further complications. Those calls were usually made while Bronson and her husband were in bed. (R. 74-77). Jones explicitly broadcasted her intentions to destroy Bronson's marriage to many people. She admitted to those people that she repeatedly called Bronson's home to annoy her (R. 79-83), and hopefully break up the marriage.

#### **SUMMARY OF ARGUMENT**

Summary judgment was entered on the basis that Bronson failed to show Jones actively pursued Bronson's husband. The motion to

amend to claim invasion of privacy was denied on the basis that it was predicated on the alienation of affections claim.

Review of the governing law demonstrates that there was indeed alienation of affections, and that Jones acted intentionally and sufficiently to harm the marital relationship. The trial court ignored Bronson's sworn statements, and the statements of additional witnesses submitted in opposition to the motion for summary judgment.

To the extent that the facts underlying this issue were in dispute, the trial court should have resolved them in Ms. Bronson's favor in ruling on the summary judgment motion.

Because the trial court erred in granting summary judgment, this Court should reverse the trial court's order granting summary judgment and remand this case for a trial.

Likewise, in ruling to deny the motion to amend, the trial court ignored Bronson's affidavit and the affidavits of two witnesses, and erroneously found the amendment was predicated upon the alienation of affections claim.

Because the trial court abused its discretion in denying the motion to amend, this court should reverse the trial court's order with specifications to allow the amendment.

## **ARGUMENT**

### **I. ANY INTENTIONAL INTERFERENCE WITH THE MARRIAGE CAN SUPPORT A CLAIM OF ALIENATION OF AFFECTIONS**

The trial court misread the law when it reasoned that summary

judgment was proper because Bronson failed to show that Jones pursued her husband actively. Judge Hanson wrote in his Memorandum Decision,

[A]ccordingly, the only evidence before the Court with respect to Mr. Bronson is that with the exception of one telephone call from the defendant to Mr. Bronson in 1998, the defendant has not otherwise contacted Mr. Bronson in the last four years. Furthermore, while there is evidence that the defendant has contacted plaintiff on a number of occasions, the necessary element of alienation of affections is that the defendant actively pursue or entice the plaintiff's spouse.<sup>1</sup>

(R. 146). The trial court's analysis is wrong and not supported by any authority. Alienation of affections does not occur only when there is a sexual relationship between a spouse and a third party or even in the "pursue or entice" scenario the trial court devised. But interference, whatever the type, with the marital relation is the gravamen of the tort. The Utah Supreme Court has explained that,

The tort of alienation of affections protects the marriage relationship from a variety of assaults by third persons, whether extramarital sexual affairs are involved or not. Sexual misconduct is only one means of destroying spousal affections. The gist of the tort is the protection of the love, society, companionship, and comfort that form the foundation of a marriage and give rise to the unique bonding that occurs in successful marriages. See W.

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<sup>1</sup>. The trial court completely ignored the material importance of the sworn statements of Plaintiff (R. 74-77) and two additional witnesses (R. 78-83), and based its decision to grant summary judgment only on the result of the deposition of Plaintiff's husband, Mr. Lawrence Tracy Bronson. R. 41-51. The Court had denied the motion of Bronson's husband to supplement his deposition. (R. 144-148).

Keeton, Prosser and Keeton on the Law of Torts, § 124 at 918 (5th ed.) Jones v. Carvell, 641 P.2d 105 (Utah 1982). Cf. Evans v. Oregon Short Line R.R. 37 Utah 431, 108 P. 638 (1910)

Norton v. MacFarlane, 818 P.2d 8, 12-13 (Utah 1991)(Citations in original).

To establish a case of alienation of affections, a Plaintiff has the burden of proving:

1. The fact of a marriage,
2. The defendant's willful and intentional alienation of the wife's or husband's affection, and
3. A resulting loss of comfort, society, and consortium of the wife or husband.

See Wilson v. Oldroyd, 267 P.2d 759 (1954).

In fact, only willful and intentional acts to alienate a spouse of the affections of another is necessary. Acts of interference with the marital bonds do not have to be in the form of extra marital affairs.<sup>2</sup> MacFarlane, 818 P.2d at 13 (Utah 1991) citing to O'Neil v. Schuckardt, 733 P.2d 693 (Idaho 1986). In Schuckardt, the Idaho Supreme Court held third parties, a church organization and its members, liable for alienating a wife's affections by using a combination of severe psychological and religious pressures aimed at the marriage). In our case, it is

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<sup>2</sup>. Pursuant to the Supreme Court's analysis in Norton v. MacFarlane, 818 P.2d 8, 12-13 (Utah 1991), for example, if a jury determines that Jones' incessant telephone calls to Bronson upset her husband and caused her a loss of love, comfort, society and companionship, she can make a claim of alienation of affections.

obvious that the alleged conduct Bronson claims Jones perpetrated against her marriage constitutes conduct aimed expressly at the disrupting the bonding between her and her spouse. MacFarlane, 818 P.2d at 13 (Utah 1991).

THE RESTATEMENT (SECOND) OF TORTS § 683, note (g) states: "[i]n order for liability to arise for alienation of affections there must be an active and affirmative conduct." The facts show that Ms. Jones was unilaterally, actively, affirmatively and sufficiently campaigning to destroy Bronson's marriage or at least to harm it. Jones's adamant and stubborn contact with Bronson's family wrecked havoc in the marriage according to Bronson's sworn statements. (R. 74-77). Ms. Jones's conduct has caused discord in the marriage, and Bronson's ultimate loss of love comfort, society and companionship.

In the trial court, Ms. Jones did not contest the truthfulness of Bronson's affidavit or of the sworn statements of the other affiants. She merely relied on the deposition of Bronson's husband who only admitted to one personal contact with Jones in 1988, although later he tried to cure the defects in his deposition by supplementation.<sup>3</sup> However, Bronson's detailed affidavit states:

I, Tammy Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

1. I am the Plaintiff in this matter.
2. I am the wife of Lawrence Tracy Bronson. I have been married to Mr. Bronson since March 24, 1988. We have two children ages five and ten years old.

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<sup>3</sup> See note 1.

3. Shortly after our marriage, my husband had an affair with Ms. Lisa Ann Jones, the Defendant in this matter. The brief affair produced a child.

4. However, after discovering that Ms. Jones was pregnant, my husband stopped seeing Ms. Jones, except for matters involving the child the affair produced.

5. In the past the child has been at my home for visitations and was treated well. To try to have little, if anything, to do with Ms. Jones, child support is paid through the Office of Recovery Services, and for a period of time, we discontinued my husband's visitation rights.

6. The fact that my husband and Ms. Jones had a child notwithstanding, Ms. Jones has been conducting a relentless campaign to get my husband to leave me and establish a relationship with her other than merely being a father to Ms. Jones's son.

7. To achieve this, Ms. Jones has been repeatedly calling my home telephone number at any hour of the day and night for years up to the date she was served with process in this case. She always requested to speak to my husband if he was at home. The conversations she initiated had nothing to do with her son. She has continually been asking my husband to leave me and to start or restart a sexual relationship. My husband and I have asked Ms. Jones repeatedly to stop calling the marital home. But, to no avail.

8. Besides the constant calling of my telephone number, Ms. Jones would continuously drive by house, making sure she is seen by my family. She did so for years up to date she was served with process in this case. This behavior and the calling of my telephone number have only increased many times over the months prior to my filing suit in this matter.

9. Often Ms. Jones called my home from her job and if I answered, she would just stay on the telephone, breathing hard and making weird noises. Other times, she would quickly tell me to "lay off my man, bitch," or "you've got my man!" and hanged up the telephone.



10. On several occasions, Ms. Jones called me and warned me not to get pregnant again because she fully intended to get my husband and she did not want further complications. Those calls would usually be received while my husband and I would be in bed.

11. Ms. Jones has told many people of her obsession with my husband and that she wanted me out of the picture.

12. Ms. Jones's relentless pursuing of my husband has caused my husband to withdraw from me as a husband and lover. As a result of the conduct of Ms. Jones, my husband is often depressed and angry, mostly after encounters with Ms. Jones, either telephonically or via her following him in the streets or at other venues.

13. My husband's withdrawal from me and his depression due to Ms. Jones's conduct have caused me to be deprived of his affection, to suffer loss of consortium and to suffer emotionally.

14. My husband and I have tried everything we could to have Ms. Jones stop interfering with our marriage. We have not been successful.

(R. 74-77)(Affidavit of Tammy Bronson) Addendum I.

Additionally, Bronson submitted two witnesses' sworn statements in opposition to the motion for summary judgment. The affidavit of Tina Bronson states:

I, Tina Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

1. I personally know Ms. Tammy Bronson, the Plaintiff in this matter. She is my sister-in-law.

2. I personally know Ms. Lisa Jones, the Defendant in the above-captioned matter. I met her in or around September 1998.

3. I was the baby-sitter for Ms. Jones's children from approximately December 1998 until about February 1999.

4. I have had several conversations with Ms. Jones in which she revealed to me that she would habitually drive by

the Plaintiff's home. She said she did most of the driving there in January and February 1999. She said that sometimes she would drive there in the company of her mother.

5. Ms. Jones also revealed to me that has repeatedly called the Plaintiff's telephone number, but would not say anything if the Plaintiff answered the telephones. She said she just held the telephone and listened to the Plaintiff saying hello, hello.

(R. 82-83)(Affidavit of Tina Bronson) Addendum II.

And the affidavit of Amy Bronson states:

I, Amie Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

1. I personally know Ms. Tammy Bronson, the Plaintiff in this matter. She is my sister-in-law.
2. I personally know Ms. Lisa Jones, the Defendant in the above-captioned matter. I met her in or around September 1998.
3. Ms. Jones told me that many times she would drive by the Plaintiff's home to check around.
4. She told me on numerous times that she is much prettier than Plaintiff and that she could not understand how Plaintiff's husband could stay married to Plaintiff whom she thinks is utterly unattractive.
5. Ms. Jones does not make it a secret that she loves and lusts for Plaintiff's husband, and that she would not stop at anything to break up the marriage and install herself in Plaintiff's place with Plaintiff's husband.

(R. 82-83)(Affidavit of Tina Bronson) Addendum III.

In fact, Bronson's affidavit and the affidavits of Tina and Amy Bronson remain unopposed and are material facts that should have defeated the motion for summary judgment.

It is worth inferring here that the trial court, in finding that "*there is evidence that the defendant has contacted plaintiff on a number of occasions...* (R. 146)(added emphasis), made a credibility assessment as to Bronson's allegations and her sworn statements, and also of the testimony of her supporting affiants, only to weigh and dismiss their credibility against the deposition of Bronson's husband. But, it is never proper for judges to make credibility determination at the summary judgment stage. This is traditionally the province of the trier of facts. "[C]redibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not the judge.... The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

The trial judge should have reasoned that the deposition testimony disputed the affidavits and created a factual and material dispute which, at the summary judgment level, should have been resolved in favor of Bronson. Instead, the trial court overlooked the cardinal rules governing the adjudication of summary judgment motions -- that summary judgment is to be granted only when there are no material factual disputes, and that all facts and inferences are to be drawn in favor of the party opposing summary judgment -- Ms. Bronson in this case. See e.g. Bowen v. Riverton City, 656 P.2d 434, 436 (Utah 1982)(in summary

judgment, all facts and inferences are to be drawn in favor of party opposing summary judgment).

At a minimum, the trial court erred in resolving facts in favor of Jones and in granting summary judgment where the material facts underlying the claim of alienation of affections were in dispute. See Bowen, supra.

This Court should therefore reverse the portion of Judge Hanson's ruling granting summary judgment on the basis that Bronson failed to show that Jones actively pursued or enticed her husband.

## II.

### **THE FACTS INDEPENDENTLY SUPPORT A CLAIM OF INVASION OF PRIVACY**

As noted above, in the Memorandum Decision granting summary judgment and denying Bronson's motion to amend, Judge Hanson stated,

"The Court denies the proposed amendment to add the claim of invasion of privacy under the 'intrusion upon seclusion' branch. The Court determines that this proposed claim is predicated on the plaintiff's alienation of affections claim, which the Court dismisses in this Memorandum Decision."

(R. 147)(Addendum IV).

In denying the Motion to Amend, the Court ignored the supporting affidavit of Bronson which states in relevant part:

I, Tammy Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

. . . . .

7. To achieve this, Ms. Jones has been repeatedly calling my home telephone number at any hour of the day and night for years up to date she was served with process in this case. She always requested speak to my husband if he was at home. The conversations she initiated had nothing to do with her son. She has continually been asking my husband to leave me and to start or restart a sexual relationship. My husband and I have asked Ms. Jones repeatedly to stop calling the marital home. But, to no avail.

8. Besides the constant calling of my telephone number, Ms. Jones would continuously drive by house, making sure she is seen by my family. She did so for years up to date she was served with process in this case. This behavior and the calling of my telephone number have only increased many times over the months prior to my filing suit in this matter.

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10. On several occasions, Ms. Jones called me and warned me not to get pregnant again because she fully intended to get my husband and she did not want further complications. Those calls would usually be received while my husband and I would be in bed.

11. Ms. Jones has told many people of her obsession with my husband and that she wanted me out of the picture.

...

(R. 74-77)(Affidavit of Tammy Bronson) Addendum I.

The trial court also ignored the affidavit of Tina Bronson which states:

I, Tina Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

1. I personally know Ms. Tammy Bronson, the Plaintiff in this matter. She is my sister-in-law.

2. I personally know Ms. Lisa Jones, the Defendant in the above-captioned matter. I met her in or around September 1998.

3. I was the baby-sitter for Ms. Jones's children from approximately December 1998 until about February 1999.

4. I have had several conversations with Ms. Jones in which she revealed to me that she would habitually drive by the Plaintiff's home. She said she did most of the driving there in January and February 1999. She said that sometimes she would drive there in the company of her mother.

5. Ms. Jones also revealed to me that has repeatedly called the Plaintiff's telephone number, but would not say anything if the Plaintiff answered the telephones. She said she just held the telephone and listened to the Plaintiff saying hello, hello.

(R. 82-83)(Affidavit of Tina Bronson) Addendum II.

And the affidavit of Amy Bronson which states in relevant part:

I, Amie (sic) Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

. . . . .

3. Ms. Jones told me that many times she would drive by the Plaintiff's home to check around.

4. She told me on numerous times that she is much prettier than Plaintiff and that she could not understand

how Plaintiff's husband could stay married to Plaintiff whom she thinks is utterly unattractive.

5. Ms. Jones does not make it a secret that she loves and lusts for Plaintiff's husband, and that she would not stop at anything to break up the marriage and install herself in Plaintiff's place with Plaintiff's husband.

(R. 82-83)(Affidavit of Tina Bronson) Addendum III.

To show a prima facie case for invasion of privacy or intrusion upon seclusion, a plaintiff has the burden to show that her solitude or seclusion has been intentionally invaded by the Defendant. RESTATEMENT SECOND OF TORTS, § 652B comment a (1977). Harassing another with continual telephone calls has been recognized as sufficient to support a claim for intrusion. Harms v. Miami Daily News, 127 So. 2d 715 (Fla. App 1961).

Bronson's affidavit and the affidavits of Amy and Tina Bronson allege that Jones made intrusive telephone calls to Bronson. Jones has never contested the fact that she made repeated obscene telephone calls to Bronson personally, irrespective of the deposition of Bronson's husband. Standing alone, the allegations of harassing telephone calls are sufficient to support a claim for invasion of privacy. Thus, the trial court's finding that the amendment was predicated upon the claim of alienation of affections is logically flawed and legally unsound.

Clearly, the motion to amend to claim invasion of privacy was well-taken and the trial court abused its discretion in denying the motion.

A. *UNLESS THE DEFENDANT IS PREJUDICED, LEAVE FOR AMENDMENT SHOULD BE GRANTED*

Rule 15 of the Utah Rules of Civil Procedure allows a complainant to amend a pleading once as a matter of right so long as no responsive pleading has been filed. Utah.R.Civ.Pro. 15(a). A pleader may also amend by obtaining leave of court. *Id.*

Bronson was not seeking to amend to take an unfair advantage. Only if a defendant can demonstrate prejudice, or if the Court itself is prejudiced, is denial of a motion to amend appropriate. Under Utah law, a primary consideration that a trial judge must take into account in determining whether leave to amend should be granted [even during trial] is whether the opposing side would be put to unavoidable prejudice by having an issue adjudicated for which she had no time to prepare. See Berkins Bar V Ranch v. Huth, 664 P.2d 455 (Utah 1983); See also Startford v. Morgan, 689 P.2d 360 (Utah 1984), *overruled on other grounds*, Staker v. Ainsworth, 785 P.2d 417 (Utah 1990); Erk v. Gleen, 116 F.2d 865 (4th Cir. 1941)(leave to amend should be liberally granted where there is no prejudice).

Conversely, it has been held that a trial court abused its discretion when it neither allowed the plaintiff to amend his complaint to conform to an issue raised for the first time at trial nor allow him to try the newly raised issue. Lloyd's Unlimited v. Nature's Way Mktg., Ltd., 753 P.2d 507 (Utah Ct. 1988).

Prime consideration in determining whether amendment to pleadings should be permitted is adequacy of opportunity for



opposing party to meet newly-raised matter. Lewis v. Moultrie, 627 P.2d 94 (Utah 1981).

*B. THE AMENDMENT SOUGHT WAS NOT INTENDED TO DEFEAT SUMMARY JUDGMENT*

Although Jones had filed a motion for summary judgment, Bronson had already filed her opposition to the motion, making a good faith argument to defeat it. Anyway, the motion for summary judgment should not have precluded the Court's discretion in granting leave to amend. Utah law recognizes that although a motion for summary judgment may be pending, if an amendment seeks to effect substantial changes in the issues, it should be granted. Dupler v. Yates, 351 P.2d 624 (Utah 1960). Here, to conform to the evidence, Bronson sought to add two distinct allegations, invasion of privacy and the collateral infliction of emotional distress, that did not substantially affect the issues already argued in summary judgment. Actually, under the facts of this case alleging incessant telephone calls to Bronson's home, Bronson could have waited until trial to move to amend, but moved the court when she did to allow Jones greater opportunity to adjust her strategy. See Rinwood v. Foreign Auto Works, Inc., 786 P.2d 1350 (Utah Ct. App.), cert. denied, 789 P.2d 1138 (Utah 1990) (in considering motions to amend pleadings, primary considerations are whether parties have adequate notice to meet new issues and whether any party receives an unfair advantage or disadvantage).

The trial court erroneously found that the motion to amend was predicated upon the same claim of alienation of affections,

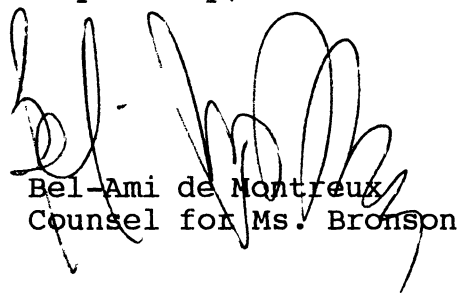
and at a minimum abused its discretion in denying the motion to amend in view of the evidence presented.

This Court should therefore reverse the portion of Judge Hanson's Order denying the motion to amend.

### **CONCLUSION**

There was enough evidence that should have been viewed in favor of Bronson to defeat the motion for summary judgment. There was absolutely sufficient evidence independently supporting the claim for intrusion of privacy. The trial court erred on both issues. This Court should reverse the order granting summary judgment, and the denial of the motion to amend, and remand this matter for trial.

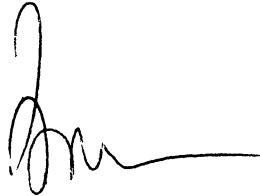
Dated this 30th day of May, 2000.



Bel-Ami de Montreux  
Counsel for Ms. Bronson

**CERTIFICATE OF MAILING/DELIVERY**

I, Bel-Ami de Montreux, hereby certify that I have caused to be hand-delivered/mailed, first-class postage prepaid, eight copies of the brief, including the original signature copy, to the Utah Court of Appeals, and two copies of the brief to James H. Woodall, Esq. Littlefield & Peterson 426 South 500 east, Salt Lake City, Utah 84102 this 30th day of May, 2000.

A handwritten signature in black ink, appearing to be 'Bel-Ami de Montreux', written over the typed name.

Bel-Ami de Montreux  
Counsel for Ms. Bronson

# **Addenda**

# **Addendum I**

BEL-AMI DE MONTREUX, #6207  
ATTORNEY AT LAW  
MONTREUX LAW OFFICES  
180 SOUTH 300 WEST, SUITE 208  
SALT LAKE CITY, UTAH 84101  
TELEPHONE (801) 359-6844

ATTORNEY FOR PLAINTIFF

---

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

TAMMY BRONSON,	:	
	:	
PLAINTIFF	:	AFFIDAVIT OF TAMMY BRONSON
VS.	:	
	:	
LISA ANN JONES,	:	CIVIL No. 990900347
	:	
DEFENDANT.	:	JUDGE T. R. HANSON

---

STATE OF UTAH            )  
                              ss:  
COUNTY OF SALT LAKE    )

I, Tammy Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

1. I am the Plaintiff in this matter.

2. I am the wife of Lawrence Tracy Bronson. I have been married to Mr. Bronson since March 24, 1988. We have two children ages five and ten years old.

3. Shortly after our marriage, my husband had an affair with Ms. Lisa Ann Jones, the Defendant in this matter. The brief affair produced a child.

4. However, after discovering that Ms. Jones was pregnant, my husband stopped seeing Ms. Jones, except for matters involving the child the affair produced.

5. In the past the child has been at my home for visitations and was treated well. To try to have little, if anything, to do with Ms. Jones, child support is paid through the Office of Recovery Services, and for a period of time, we discontinued my husband's visitation rights.

6. The fact that my husband and Ms. Jones had a child notwithstanding, Ms. Jones has been conducting a relentless campaign to get my husband to leave me and establish a relationship with her other than merely being a father to Ms. Jones's son.

X 7. To achieve this, Ms. Jones has been repeatedly calling my home telephone number at any hour of the day and night for years up to date she was served with process in this case. She always requested speak to my husband if he was at home. The conversations she initiated had nothing to do with her son. She has continually been asking my husband to leave me and to start or restart a sexual relationship. My husband and I have asked Ms. Jones repeatedly to stop calling the marital home. But, to no avail.

X 8. Besides the constant calling of my telephone number, Ms. Jones would continuously drive by house, making sure she is seen

by my family. She did so for years up to date she was served with process in this case. This behavior and the calling of my telephone number have only increased many times over the months prior to my filing suit in this matter.

X 9. Often Ms. Jones called my home from her job and if I answered, she would just stay on the telephone, breathing hard and making weird noises. Other times, she would quickly tell me to "lay off my man, bitch," or "you've got my man!" and hanged up the telephone.

10. On several occasions, Ms. Jones called me and warned me not to get pregnant again because she fully intended to get my husband and she did not want further complications. Those calls would ussually be received while my husband and I would be in bed.

11. Ms. Jones has told many people of her obsession with my husband and that she wanted me out of the picture.

12. Ms. Jones's relentless pursuing of my husband has caused my husband to withdraw from me as a husband and lover. As a result of the conduct of Ms. Jones, my husband is often depressed and angry, mostly after encounters with Ms. Jones, either telephonically or via her following him in the streets or at other venues.

13. My husband's withdrawal from me and his depression due to Ms. Jones's conduct have caused me to be deprived of his affection, to suffer loss of consortium and to suffer emotionally.

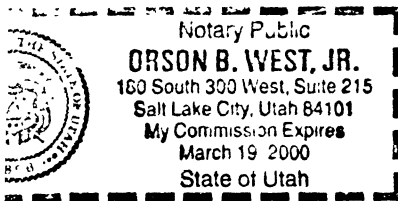
14. My husband and I have tried everything we could to have Ms. Jones stop interfering with our marriage. We have not been successful.

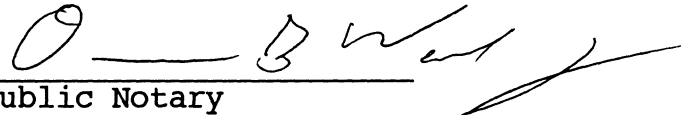


DATED this 13<sup>th</sup> day of May, 1999.

  
Tammy Bronson

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of May,  
1999.



  
Public Notary

# **Addendum II**

BEL-AMI DE MONTREUX, #6207  
ATTORNEY AT LAW  
MONTREUX LAW OFFICES  
180 SOUTH 300 WEST, SUITE 208  
SALT LAKE CITY, UTAH 84101  
TELEPHONE (801) 359-6844

ATTORNEY FOR PLAINTIFF

---

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

TAMMY BRONSON,	:	
	:	
PLAINTIFF	:	AFFIDAVIT OF AMIE BRONSON
VS.	:	
	:	
LISA ANN JONES,	:	CIVIL No. 990900347
	:	
DEFENDANT.	:	JUDGE T. R. HANSON

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STATE OF UTAH            )  
                              ss:  
COUNTY OF SALT LAKE    )

I, Amie Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

1. I personally know Ms. Tammy Bronson, the Plaintiff in this matter. She is my sister-in-law.

2. I personally know Ms. Lisa Jones, the Defendant in the above-captioned matter. I met her in or around September 1998.

3. Ms. Jones told me that many times she would drive by the Plaintiff's home to check around.


4. She told me on numerous times that she is much prettier than Plaintiff and that she could not understand how Plaintiff's husband could stay married to Plaintiff whom she thinks is utterly unattractive.

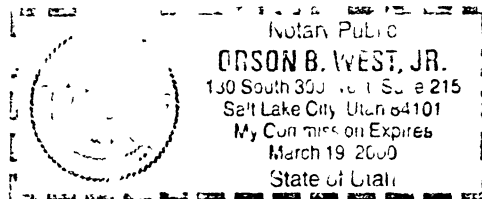
5. Ms. Jones does not make it a secret that she loves and lusts for Plaintiff's husband, and that she would not stop at anything to break up the marriage and install herself in Plaintiff's place with Plaintiff's husband.

DATED this 16 day of April, 1999.

  
Amie Bronson

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of April, 1999.

  
Public Notary



# **Addendum III**

BEL-AMI DE MONTREUX, #6207  
ATTORNEY AT LAW  
MONTREUX LAW OFFICES  
180 SOUTH 300 WEST, SUITE 208  
SALT LAKE CITY, UTAH 84101  
TELEPHONE (801) 359-6844

ATTORNEY FOR PLAINTIFF

---

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

TAMMY BRONSON,	:	
	:	
PLAINTIFF	:	AFFIDAVIT OF TINA BRONSON
VS.	:	
	:	
LISA ANN JONES,	:	CIVIL No. 990900347
	:	
DEFENDANT.	:	JUDGE T. R. HANSON

---

STATE OF UTAH            )  
                              ss:  
COUNTY OF SALT LAKE    )

I, Tina Bronson, a person over the age of 18, having been sworn upon my oath, depose and state the following:

1. I personally know Ms. Tammy Bronson, the Plaintiff in this matter. She is my sister-in-law.

2. I personally know Ms. Lisa Jones, the Defendant in the above-captioned matter. I met her in or around September 1998.

3. I was the baby-sitter for Ms. Jones's children from approximately December 1998 until about February 1999.

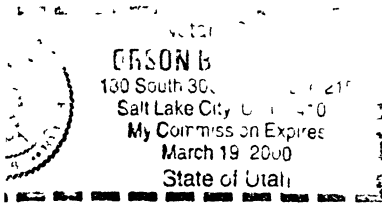
4. I have had several conversations with Ms. Jones in which she revealed to me that she would habitually drive by the Plaintiff's home. She said she did most of the driving there in January and February 1999. She said that sometimes she would drive there in the company of her mother.


5. Ms. Jones also revealed to me that has repeatedly called the Plaintiff's telephone number, but would not say anything if the Plaintiff answered the telephones. She said she just held the telephone and listened to the Plaintiff saying hello, hello.

DATED this 16 day of April, 1999.

  
Tina Bronson

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of April, 1999.



  
Public Notary

# **Addendum IV**



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

TAMMY BRONSON,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 990808247
vs.	:	<b>FILED DISTRICT COURT</b> Third Judicial District
LISA ANN JONES,	:	AUG 31 1999
Defendant.	:	SALT LAKE COUNTY
		By _____ Deputy Clerk

Before the Court is the defendant's Motion for Summary Judgment and the plaintiff's Motion to Amend Complaint. The parties appeared through counsel on August 2, 1999, and argued their respective positions. Following oral argument, the Court took the matter under advisement to further consider the written submissions of the parties. Since having taken the Motions under advisement, the Court has had an opportunity to consider the law, all relevant pleadings and facts and oral argument in this case. Being otherwise fully advised, the Court enters the following Memorandum Decision.

**FACTUAL BACKGROUND**

The plaintiff and Tracy Bronson were married on March 24, 1988. On September 18, 1989, Mr. Bronson, who was previously acquainted with the defendant, had a brief affair with her. Also in 1989, the plaintiff and Mr. Bronson separated due to marital

problems unrelated to the affair. During the separation, the defendant and Mr. Bronson resumed their affair. As a result of the affair, the defendant became pregnant and gave birth to a son. In May 1990, Mr. Bronson moved back in with the plaintiff and refused to see the defendant again.

#### LEGAL ANALYSIS

In order for the plaintiff to bring a successful action for alienation of affections, she has to establish that the defendant purposely attempted to alienate Mr. Bronson's affections from her. Restatement (Second) of Torts §683 (1977). The Court interprets §683 and the Utah case law discussing the tort of alienation of affections as requiring the plaintiff to identify the existence of efforts to alienate on the part of the defendant aimed directly at the spouse which are the controlling cause of the marital discord. See Norton v. Macfarlane, 818 P.2d 8 (Utah 1991). The Court therefore considers whether the plaintiff can show that the defendant has made such efforts.

The defendant took Mr. Bronson's deposition on March 16, 1999. In that deposition, Mr. Bronson testified that he and the defendant had not been in contact for over four years. After the deposition was taken, Mr. Bronson prepared a number of amendments to the transcript which directly contradicted his deposition testimony.

For instance, one of Mr. Bronson's "amendments" states that the defendant has virtually been in constant contact with him since 1998, making telephone calls to his home and following him on the street. During oral argument, the defendant's counsel asked the Court not to consider Mr. Bronson's "amendments" because they exceeded the scope of Utah Rule of Civil Procedure 30(e), which permits deponents to make limited corrections to deposition testimony. The Court agreed with the defendant and ruled that because Mr. Bronson's additional testimony was contrary to his original testimony it would not be considered by the Court.

Accordingly, the only evidence before the Court with respect to Mr. Bronson is that with the exception of one telephone call from the defendant to Mr. Bronson in 1998, the defendant has not otherwise contacted Mr. Bronson in the last four years. Furthermore, while there is evidence that the defendant has contacted the plaintiff on a number of occasions, the necessary element of alienation of affections is that the defendant actively pursue or entice the plaintiff's spouse. In fact, the typical defense raised in an alienation of affections lawsuit is that the plaintiff's spouse is the one who pursued the defendant or that the plaintiff's spouse voluntarily gave his or her affections to the defendant. The focus, therefore, is on the contact between the

defendant and the plaintiff's spouse, not on the plaintiff. Inasmuch as the evidence fails to prove that Mr. Bronson was pursued by the defendant in an effort to deprive the plaintiff of the enjoyment of the marital relationship, the Court determines that the defendant is entitled to judgment as a matter of law. Accordingly, the defendant's Motion to Dismiss is granted.

The Court next considers the plaintiff's Motion to Amend. The Court denies the plaintiff's proposed amendment to add the claim of "emotional distress" because this claim is essentially the same as the "emotional distress" claim previously dismissed by the Court. The Court also denies the proposed amendment to add the claim of invasion of privacy under the "intrusion upon seclusion" branch. The Court determines that this proposed claim is predicated on the plaintiff's alienation of affections claim, which the Court dismisses in this Memorandum Decision. Accordingly, the plaintiff's Motion to Amend is denied in the entirety.

Counsel for the defendant is to prepare an Order consistent with this Memorandum Decision and submit the same to the Court for review and signature.

Dated this 31 day of August, 1999.

151  
TIMOTHY R. HANSON  
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this\_\_\_\_\_ day of August, 1999:

Bel-Ami De Montreux  
Attorney for Plaintiff  
180 South 300 West, Suite 208  
Salt Lake City, Utah 84101

James H. Woodall  
Attorney for Defendant  
426 South 500 East  
Salt Lake City, Utah 84102

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